should have been served on the other parties to the dispute. Can it be said that the bringing of the appeal by an originating motion and not by a notice of appeal, when the originating motion can itself be treated as a notice of appeal, occasioned any prejudice to the applicant which could not be compensated by costs? I do not think so. I must therefore hold that the originating motion here is not a nullity but an irregularity which can be cured.

It is to be observed that the subject matter of the originating motion is stated to be an appeal under section 107 of the Mining Enactment and in it are set out six grounds on which it was sought to appeal from the decision of the senior inspector of mines. To the affidavit in support of the originating motion are annexed copies of the pleadings in the senior inspector's court, copies of a large number of documents which were sought to be put in evidence but were rejected as being irrelevant, and a copy of the notes of the proceedings before the senior inspector in which are set out his judgment in brief and the order which he made. It would seem clear from these notes of proceedings that no evidence was called by either party and that the case was decided on the submissions made by their respective counsel. There are thus present in the originating motion and the supporting affidavit all the constituents of a proper appeal record, although on the hearing of the appeal the court may well take the view that copies of the documents in the record which were not allowed to be put in as exhibits should not be considered for the purpose of the appeal.

Counsel for the respondent referred to a number of old cases in which appeals from the mines court were registered and numbered in the High Court as civil appeals, which was not done in this case. That, in my opinion, is a defect which can be easily cured by enclosing the originating motion in an appropriate civil appeal docket file with the next consecutive appeal number and by an endorsement on the register of originating motions to the effect that the present originating motion has been re-numbered as a civil appeal. The originating motion can also be treated as a notice of appeal in lieu of the appropriate notice under Order XXXIX of the Subordinate Courts Rules, 1950.

In the result, I would allow this appeal, setting aside the order of the court below except in so far as it relates to costs and substituting therefor an order that the originating motion do stand as a notice of appeal as well as a record of appeal. There will also be an order that the costs of this appeal be paid by the appellant. In order to complete all the formalities required to be observed in relation to an appeal from a subordinate court there will be a further order that a copy of this order be served by the appellant on the senior inspector of mines and that a deposit of $150 by way of security for the costs of the appeal be lodged in his court.

Before concluding the matter I must emphasise that the Rules of Court are meant to be obeyed Their non-observance will not necessarily nullify the proceedings, as in the present case, but the party choosing to adopt the wrong procedure is always placed in the unenviable position of having to pay all the costs to have the matter set right because of the mistakes of his legal advisers.

**Suffian Ag. L.P.** and **Ong Hock Sim F.J.** concurred.

*Appeal allowed.*

Solicitors: *Richard Talalla & Co.; Cumarasami, Tang & Co.*

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## THE TITULAR ROMAN CATHOLIC BISHOP, KUALA LUMPUR v. CHAIRMAN, KLANG TOWN COUNCIL

**[F.C. (Suffian, Gill and Ong Hock Sim F.JJ.) May 4, 1972]**

**[Kuala Lumpur — Federal Court Civil Appeal No. 120 of 1971]**

*Local Government — Rating — Land holding comprised of church, parochial house and parish hall — Exclusively used for the advancement of religion, education and charity — Whether property exempt from payment of rates — Town Boards Enactment (F.M.S. Cap. 137) s. 33.*

*Practice and Procedure — Jurisdiction — Appeal from High Court — Town Boards Enactment (F.M.S. Cap. 137), s. 44(i).*

This was an appeal from a decision of the High Court, affirming a decision of the Klang Town Council, to levy rates on church property of which the registered proprietor is the appellant.

The appellant contended that this holding was exempted from payment of rates under section 33 of the Town Boards Enactment.

The Town Council made their decision under the Town Boards Enactment (Cap. 137). In accordance with section 44 of the Enactment, the appellant appealed to the High Court, which decided in favour of the respondent.

The appellant further appealed to the Federal Court.

**Held,** striking out the appeal: the Federal Court had no jurisdiction to entertain it as section 44(iv) of the Town Boards Enactment expressly provides that the decision of the High Court "shall be final and conclusive", and paragraph (d) of section 68(1) of the Courts of Judicature Act 1964, provides that no appeal shall be brought to the Federal Court "where, by any written law for the time being in force, the judgment or order of the High Court is expressly declared to be final."

*Cases referred to:-*

(1) *The Commissioners for Special Purposes of the Income Tax* v. *Pemsel* [1891] A.C. 531.

(2) *Chesterman & Ors.* v. *Federal Commissioner of Taxation* (1925) 37 C.L.R. 317.

[Authority cited other than those mentioned in the judgment: *Tunku Abdullah* v. *Ali Amberan* [1971] 1 M.L.J. 25.]

FEDERAL COURT.

*R. T. S. Khoo* for the appellant.

*D. P. Vijendran* for the respondent.

In the court below, *L. Cheah* appeared for the appellant, and *D. P. Vijendran* appeared for the respondent. The following judgment was delivered in the High Court by Yong J. on November 11, 1971.

**Yong J.:** This is an appeal by the Titular Roman Catholic Bishop of Kuala Lumpur representing the Roman Catholic Church, against the order of the Chairman of the Klang Town Council levying a tax (or rate) on the holding comprised in Lot 4612 in Persiaran Rajawali, Berkeley Garden, Klang.

On this holding were built a church, a parochial house, and a parish hall. The appellant contended that this holding is exempt from payment of rates under section 33 of the amended Town Board Enactment (F.M.S. Cap. 137) which reads:—

"All holdings used exclusively as places for religious worship, all duly licensed public burial and burning grounds used exclusively for such purposes, all holdings used exclusively for public schools or for charitable purposes or for the purposes of science, literature or the fine arts and not for pecuniary profit, and all holdings belonging to or rented by the Ruler of the State or the Government of the State or of the Federated Malay States may by direction of the Ruler in Council be exempt from the payment of any rate."

Under this section the appellant in order to succeed must therefore prove that:—

(a) His holding comes within the meaning of the section and

(b) It has by the direction of the Ruler in Council been exempted from payment of any rate.

This section is divided into three limbs. In my opinion the church comes within the first limb, and the parochial house and parish hall within the second limb. On the evidence before me I find that the church is clearly a place for religious worship. The parochial house is primarily used as a place for giving religious guidances to those who need them and religious teachings to those who want to learn them. As a priest has to be available at the parochial house night and day, his attendance and residence there are only incidental. Unlike a parsonage or rector's house in England, this parochial house is not a house attached to the parson's benefice or living; it is attached to the church for religious teachings and for the advancement and promotion of religion. Similarly with the parish hall, which I find is used as a school and a lecture hall for giving of lessons and lectures and also as a centre for recreational purposes. They are open to members of the public irrespective of their religion or creed. In my opinion such laudable objects are beneficial to the community. The parish hall and the parochial house are run, not for pecuniary profits, but for the advancement of religion, education and charity. They therefore come within the objects of the second limb of section 33. I am fortified in this view by the Privy Council case of *Commissioners for Special Purposes of the Income Tax* v. *John Frederick Pemsel*[1] where Lord Macnaghten at page 583 construed the word "charity" to mean as follows:—

"Charity in its legal sense comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion and trusts for other purposes beneficial to the community, not falling under any of the preceding heads."

This construction was followed in another Privy Council case of *Chesterman and Others* v. *The Federal Commissioner of Taxation*[2] where the question was as to the true meaning and construction of the word "charitable" in section 8(5) of the Australian Estate Duty Assessment Act 1914-1916, which reads:—

"Estate duty shall not be assessed or payable upon so much of the estate as is devised or bequeathed or passes by gift *inter vivos* or settlement for religious, scientific, charitable or public educational purposes."

Lord Wrenbury in delivering the judgment of the court held that "the four words (religious, scientific, charitable or educational) are not mutually exclusive" and that "In construing Acts of Parliament, it is a general rule ... that words must be taken in their legal sense unless a contrary intention appears" and that the word "charitable" should be construed in the legal sense as defined in the four divisions laid down above by Lord Macnaghten in *Pemsel's* case, *supra*, and that its meaning must not be restricted only to mean "the relief from poverty" or eleemosynary. He therefore held that a gift of a fund to provide prizes for competitions in physical, moral and literary excellence, without regard to pecuniary means of the competitors was for charitable purposes within the meaning of the said section 8(5) of the Act.

In my opinion the appellant's holding with its church, parochial house and parish hall for purposes as described above come within the purview of section 33 of the amended Town Boards Enactment (Cap. 137). This alone does not however entitle the appellant to exemption. He must further prove that his holding has by the direction of the Ruler in Council been exempted from payment of rates. There is no evidence before me whether such a direction has or has not been obtained. If it has or is going to be obtained the respondent should abide by that direction.

In the absence of such evidence, this appeal is with great reluctance dismissed with costs.

*From the above decision the appellant appealed to the Federal Court. The judgment of the Federal Court by Suffian F.J. was read by Gill F.J.:*

**Suffian F.J.:** We struck off this appeal because in our opinion we have no jurisdiction to entertain it.

The decision appealed from is a decision of the High Court affirming a decision of the Klang Town Council to levy rates on church property of which the registered proprietor is the Titular Roman Catholic Bishop of Kuala Lumpur.

The Town Council made their decision under the Town Boards Enactment (F.M.S. Cap. 137). The Bishop, being dissatisfied with that decision, appealed to the High Court. This was in accordance with section 44 of the Enactment. The High Court heard the appeal and decided in favour of the Town Council.

Now sub-section (iv) of the section expressly provides that the decision of the High Court "shall be final and conclusive", and paragraph (d) of sub-section (1) of section 68 of the Courts of Judicature Act No. 7 of 1964 provides that no appeal shall be brought to the Federal Court —

"where, by any written law for the time being in force, the judgment or order of the High Court is expressly declared to be final".

In view of this very clear provision we did not think that we have jurisdiction to entertain this appeal.

Mr. Khoo for the appellant conceded, and we think rightly, that if this was a civil appeal this court would have no jurisdiction, but he sought to argue that the court might regard this, not as a civil but rather as a quasi-criminal appeal, similar to an appeal from a maintenance order and that in that event this court would have jurisdiction. With respect we could not agree. In our opinion, the decision appealed from is clearly "a judgment or order of any High Court in any civil matter" within the meaning of section 67 of the Courts of Judicature Act and therefore governed by section 68 thereof.

We ordered the appellant to pay costs which we assessed at only $100 in view of his special character.

*Appeal struck off.*

Solicitors: *Shearn, Delamore & Co.; Athi Nahappan & Co.*

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## PUBLIC PROSECUTOR v. NASIR

**[R.Cr.J. (Abdul Hamid J.) May 9, 1972]**

**[Kuala Lumpur — Selangor Criminal Revision No. 9 of 1971]**

*Road Traffic — Breach of statutory requirement — Failure to display "L" plates on motor vehicle — Effect on policy of insurance — Disqualification from driving — Road Traffic Ordinance, 1958, s. 74(2).*

This was an application by the learned magistrate, Kuala Lumpur, for revision.

The respondent was convicted under the provisions of the Road Traffic Ordinance, 1958, for riding a motor cycle and failing to display 'L' plates, and also for having no insurance cover in respect of third party risks. He was fined $50 on the first charge and $150 on the second charge and was disqualified from driving for one year.

The learned magistrate stated that he had realised that he was wrong in making the ruling that the insurance policy was ineffective. He, therefore, sought a ruling on whether or not a learner driver in possession of a valid insurance policy against third party risks in respect of the motor vehicle and who drives his motor vehicle while in possession of a valid provisional driving licence but who fails to display 'L' plates as required by rule 16(c) of the Motor Vehicle (Driving Licence) Rules, 1959, is guilty of an offence under section 74(1), punishable under section 74(2) of the Road Traffic Ordinance, 1958.

**Held:** by the respondent's failure to display the 'L' plates as required by rule 16(c) of the Motor Vehicle (Driving Licence) Rules, 1959, he committed a breach of one of the conditions attached to the learner's licence and he should therefore be disqualified by the rule in that behalf from driving. Consequently, he committed an offence under section 74(1) of the Road Traffic Ordinance, 1958, in using the said vehicle without there being in force a policy of insurance in respect of third party risks. Therefore, he was rightly convicted.

*Cases referred to:-*

(1) *Tan Kwang Chin* v. *Public Prosecutor* [1959] M.L.J. 252.

(2) *Public Prosecutor* v. *Albert See* [1971] 1 M.L.J. 47.

REVISION.

*Sharkawi Alias* (Deputy Public Prosecutor) for the Public Prosecutor.

Respondent absent.

**Abdul Hamid J.** (delivering oral judgment): This is an application by the magistrate, Kuala Lumpur, for revision. The respondent was convicted on the following charges —

"1. That you on 25.5.71 at about 9.00 p.m. at Persiaran Gurney, Kuala Lumpur, being the rider of motor cycle BJ. 5417 and holder of a provisional driving licence did fail to comply with one of the conditions subject to which it was granted, to wit, did fail while the said vehicle was being ridden by you to clearly display in a conspicuous position on the front and on the back of the vehicle 'L' plates as prescribed, contrary to Rule 16(c) of the Motor Vehicle (Driving Licence) Rules, 1959 and that you have thereby committed an offence under section 28(4) of the Road Traffic Ordinance 1958 and punishable under section 146(1) of the said Ordinance.

2. That you on the same time, date and place being the rider of motor cycle BJ. 5417 did use the said vehicle on the road without there being in force in relation to the user of such vehicle by yourself a policy of insurance in respect of third party risks as complies with the requirement of the Road Traffic Ordinance, 1958 and that you have thereby committed an offence under section 74(1) of the Road Traffic Ordinance, 1958 and punishable under section 74(2) of the said Ordinance."

The respondent was fined $50 on the first charge and $150 on the second charge and he was also disqualified from driving for one year.

It is stated by the magistrate that upon reflection, he had realised that he was wrong in making the ruling that the insurance policy was ineffective. He therefore seeks a ruling on whether or not a learner driver in possession of a valid insurance policy against third party risks in respect of the motor vehicle and who drives his motor vehicle while in possession of a valid provisional driving licence but who fails to display "L" plates as required by rule 16(c) of the Motor Vehicle (Driving Licence) Rules, 1959 is guilty of an offence under section 74(1) punishable under section 74(2) of the Road Traffic Ordinance, 1958.

The magistrate referred to the case of *Tan Kwang Chin* v. *Public Prosecutor*(1) whereby, he said, the court held to the effect that a driver who had an expired provisional driving licence is still covered by the terms of his insurance policy. The magistrate believes that he is bound by that decision. With respect, I think the magistrate has misconstrued the decision in *Tan Kwang Chin* v. *Public Prosecutor, supra.* In that case, the appellant was convicted for driving a car without a driving licence. At that time, the appellant's provisional driving licence had already expired. The car that was driven by him belonged to a friend and he drove it with the express permission of his friend. The appellant was also convicted for driving without being covered by insurance policy in respect of third party risks.

The policy authorised the following persons to drive the vehicle —

(a) The insured.

(b) Any other person who is driving on the insured's order or with his permission —

Provided that the person driving is permitted in accordance with the licensing or other laws or regulations to drive the motor vehicle or has been so per-